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Remarks

Reconsideration of the above-captioned application is respectfully requested. Claim 12 (sic, 14) has been objected to for reciting a term that did not have proper antecedent basis, which has been corrected hereby and will not be further addressed.

Claims 1, 3, 4, 12-15, 17, 21, 22, 25, 27, 28, and 30 have been rejected as being anticipated by Fujitsu (Japanese patent document with English abstract), and Claims 1, 2, 4, 5, 7, 9, 11-16, 18-20, 22, 23, 25, 26, 28-31, and 35 have been rejected as being anticipated by Williams et al. USPN 5,977,964. Claims 6, 10, 24, 32, and 33 have been rejected as being obvious over Williams et al.

To overcome the Examiner's rejections, independent apparatus Claim 1 has been amended to recite a closed-ended group of settings that are established based on one or more of time of day, TV location in a building, and TV geographic location, specifically, audio volume, audio dynamic range, audio treble, audio bass, audio EQ, and surround sound, with the video setting being selected from the group consisting of menu color, brightness, contrast, color, and tint as set forth in various dependent claims and the present summary. Claims 9 and 10 have been rewritten in independent form to recite establishing TV settings based on location of the TV in a dwelling and time of day, respectively. Independent Claim 15 now specifies establishing at least one audio and/or video setting on a TV based on at least one of: location of the TV, and time, whereas independent Claim 25 recites establishing at least one of: an audio setting, and a video setting selected from the group consisting of menu color, color, tint, brightness, and contrast, on the TV based on a TV location and/or a time. Claims 1-35 remain pending.

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Rejections Under 35 U.S.C. §102

Claims 1, 3, 4, 12-15, 17, 21, 22, 25, 27, 28, and 30 have been rejected under 35 U.S.C. §102 as being anticipated by Fujitsu, and Claims 1, 2, 4, 5, 7, 9, 11-16, 18-20, 22, 23, 25, 26, 28-31, and 35 have been rejected under this section as being anticipated by Williams et al. With respect to Fujitsu, it does not appear that any "settings" are established, much less the particular settings set forth in, e.g., Claim 1, but rather it appears to establish frequency channels based on GPS signals. Frequency channels are not audio or video settings, in contrast to the present independent claims. Indeed, audio and video settings are independent of the frequency of the communication path and vice-versa. For this reason, the rejections based on Fujitsu have been overcome.

Furthermore, unlike Claims 9 and 10, no mention is made in the provided abstract of Fujitsu of time of day or room location, much less establishing audio and/or video settings based thereon.

Additionally, Applicant does not acquiesce that Fujitsu "inherently" discloses heuristics or a wide area source of data. An allegedly "inherent" characteristic must *necessarily* be present in a reference, MPEP §2112. There is nothing that requires Fujitsu to necessarily access heuristics to establish channels based on location. Rather, a channel list (which is not rule-based) need simply be accessed. Likewise, Fujitsu need not necessarily use a wide area source of data, but can access a private, single source of information to work.

With respect to Williams et al., Williams et al. teaches establishing various video and audio settings *but only based on user identification*, not based on time of day or TV location. It appears that the only thing that Williams et al. establishes based on time of day is a channel list. But a channel list is not, for instance, set forth in the exclusive list of settings of Claim 1, nor has it been shown that the skilled artisan would regard a channel list as being a "video setting" as is otherwise required under MPEP §2111.01 to equate the

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two. Certainly, had Williams et al. meant to suggest that the audio and video settings, which vary in Williams et al. only from user to user, could also be varied for any particular user based on time of day or TV location, Williams et al. could have mentioned it, but did not. Only the present invention has made the critical recognition that audio and/or video settings, as those terms are properly understood, can be varied based on time of day and/or location.

Furthermore, no mention appears in Williams et al. of establishing anything based on geographic or room location.

The fact that Applicant has focussed its comments distinguishing the present claims from the applied references and countering certain rejections must not be construed as acquiescence in other portions of rejections not specifically addressed.

Rejections Under 35 U.S.C. §103

Claims 6, 10, 24, 32, and 33 have been rejected under 35 U.S.C. §103 as being unpatentable over Williams et al. For reasons set forth above, the claims are patentable. Further, the claims rejected under this section, which as admitted in the Office Action are not present in Williams et al., have been rendered unpatentable over Williams et al. solely based on the examiner's unsupported opinion that the claimed untaught elements are nevertheless obvious. Applicant will not belabor the point further than to observe that as the examiner must be well aware, allegations of obviousness unsupported by evidence thereof from the prior art are not sufficient in establishing a *prima facie* case of obviousness, MPEP §2143 *et seq.* and In re Dembiczak, 175 F.3D 994, 50 U.S.P.Q.2d 1614 (Fed. Cir. 1999) (the range of sources available does not

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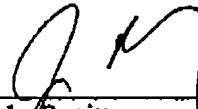
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diminish the requirement for actual evidence, and "broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence").

The Examiner is cordially invited to telephone the undersigned at (619) 338-8075 for any reason which would advance the instant application to allowance.

Respectfully submitted,



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